IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.991/99

M/s. Gajanand Agarwal & Anr.

Versus

State

DATE OF ORDER :: 07/08/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Anoop Dhand, for petitioners
Mr. Jagdish Lamba, P.P.

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Instant petition has been filed by accused-petitioners against the order of learned trial Judge dated 15th November, 1995 whereby cognizance was taken against them for offence u/s.7/16 of Prevention of Food Adulteration Act, 1954 and the revision petition filed against the said order was dismissed on 20th July, 1999.

Facts arise for consideration in the instant misc. petition, are that the Food Inspector visited Vendor's shop M/s. Shiv Shakti General Store, Khandela on 23rd July, 1988 where he met the Vendor Virdhi Chand selling spices. The Inspector purchased by making payment of Rs.9/- 450 gms. red chilly powder and after it being sealed in three separate bottles, the same was sent to the Laboratory and the public analyst in its report dated 9th August, 1988 observed that the sample was adultered as it does not confirm to the prescribed standards of purity. This

report was made available to the Inspector on 26th August, 1988. Since sanction was required u/s.20 of Act, 1954 by the competent authority i.e. State Government in the instant case which was granted on 22nd June, 1990 and accordingly, the complaint was filed before the competent court of jurisdiction on 30th September, 1991 making vendor and distributor as accused in his complaint. Learned trial Judge after taking into consideration the materials which were annexed with the complaint, took cognizance against accused-petitioner u/s.7/16 of the Act, 1954 – against which petitioner filed revision petition which was dismissed by the Revisional Court.

Counsel for petitioners vehemently contends that very complaint, which has been filed on 30th September, 1991 for the incident which took place on 23rd July, 1988, is barred by limitation as contemplated u/s.468 Cr.P.C. which is three years in regard to cases where offence is punishable with imprisonment of term exceeding one year but not exceeding three years and since the present complaint was barred by limitation, learned trial Judge has committed a manifest error in taking cognizance on said complaint and its very action and all criminal proceedings initiated in pursuance thereof deserve to be quashed and set aside.

Counsel further submits that the complaint admittedly was signed by the Inspector on 14th

August, 1989 in which a reference has been made that sanction for prosecution has been granted to him under the orders and signatures of Dr. S.K. Das Gupta, CMHO, but the sanction order which has been placed on record, is of dated 22nd June, 1990 annexed by the prosecution along with their complaint, has been later obtained to bring the complaint instituted in the Court within limitation and the relevant sanction order has not been placed on record, thus, his rightful claim under law has been denied to him by this indirect method adopted by respondents and according to him, no further investigation is required since document placed on record is apparent and speak of its own and no evidence in support thereof is needed in the matter.

Learned Public Prosecutor while supporting the complaint and so also the order passed by learned trial Judge taking cognizance and the finding recorded under order impugned by the Revisional Court further submits that the complaint has been rightly entertained and cognizance has been taken by learned trial Judge which is in accordance with the provisions of relevant Section 468 Cr.P.C. and the petition deserves to be dismissed.

I have considered the submission of both the counsel and perused the finding recorded under order impugned.

The facts on record indeed speak of fact that red chilly powder which was purchased by Inspector from the vendor's shop on 23rd July, 1988 was sent to the public analyst for testing who in its report found it to be adultered and the ordinary course which is available after said report was received that it should be tried in accordance with the provisions of the Act, 1954 and such complaint must bring to home unless there is a provision otherwise available in the statute. Limitation has been provided u/s.468 Cr.P.C. with an object that there should not be of undue harassment to the accused and he must face prosecution at earliest without any delay so that the evidence which is available with him by passage of time may not be ruled out which certainly may cause prejudice to him, but in the instant case, sanction for prosecution was one of the requirement u/s.20 of the Act, 1954. Undisputedly, the sanction was accorded by the competent authority on 22nd June, 1990 under the signatures of Dr. N.M. Singhvi which was part of record and annexed along with the complaint and Section 470(3) of the Code excludes such time which has been consumed in seeking sanction, if required, before filing of complaint before the competent court of jurisdiction.

From the date sanction was granted the complaint which was filed before the competent court, certainly, is within limitation. Argument which was made by counsel for petitioner that

complaint was signed by Inspector on 14th August, 1989 in which a reference has been made of sanction being accorded to him by Doctor Mr. S.K. Das Gupta which certainly is missing from the record and later complaint has been obtained from Dr. Singhvi is placed on record which was filed along with the complaint of later date which has been obtained only to bring the accused home under the provisions of the Act that has frustrated his right, is of no substance for the reason that at this stage, learned trial Judge has taken cognizance against him and from perusal of record sanction which has been enclosed along with complaint is of June, 1990 it is within limitation and all such submissions are available for petitioner to raise at the appropriate stage.

This court does not find any substance in the instant misc. petition, the same is, accordingly, dismissed. Record be sent back to trial court forthwith, who may proceed further in accordance with law.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.